

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 PAMELA SUZANNE HARNDEN,

5 Plaintiff,

6 -v-

Case No. 16-13904
16-13905

7 ST. CLAIR COUNTY 31ST
8 DISTRICT COURT,

9
10 Defendant./

11 **MOTIONS TO DISMISS**

BEFORE HON. ANTHONY P. PATTI

12 United States Magistrate Judge
Theodore Levin U.S. Courthouse
13 231 West Lafayette Boulevard
Detroit, Michigan 48226

14 **(Tuesday, November 7, 2017)**

15 APPEARANCES: PAMELA SUZANNE HARDEN
Appearing in pro se.

16
17 TODD J. SHOUDY, ESQUIRE
Appearing on behalf of the Defendants.

18 TRANSCRIBED BY: MARIE METCALF, CVR, CM
Federal Official Court Reporter
19 867 U.S. Courthouse
20 231 W. Lafayette Boulevard
Detroit, Michigan 48226
metcalf_court@msn.com
21
22

23 *(TRANSCRIPT PRODUCED FROM DIGITAL VOICE RECORDING;*
24 *TRANSCRIBER NOT PRESENT AT PROCEEDINGS)*
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

PROCEEDINGS - TUESDAY, NOVEMBER 7, 2017

Harnden v. St. Clair County 31st District Court

Detroit, Michigan

Tuesday, November 7, 2017

At 2:16 p.m.

* * *

DEPUTY COURT CLERK: All rise. United States District Court for the Eastern District of Michigan is now in session, the Honorable Anthony P. Patti, United States Magistrate Judge, presiding. You may be seated.

The Court now calls cases 16-13904 Harden versus St. Clair County, et al., and case number 16-13905, Pamela Suzanne Harnden versus St. Clair County 31st District Court.

THE COURT: Okay. Your appearances for the record, please?

MR. SHOUDY: Your Honor, on behalf of the defendants in both cases, Todd Shoudy.

THE COURT: Okay.

MS. HARNDEN: Pam Harnden, petitioner.

THE COURT: All right. Well, nice to meet you both.

Mr. Shoudy, these are your motions, so why don't you go first.

MR. SHOUDY: Thank you, Your Honor, and good afternoon.

We're before the Court on two of -- on two separate cases, a motion to dismiss. There is one issue in common in both cases, and that is the statute of limitations defense.

Harnden v. St. Clair County 31st District Court

1 We raised that in both cases and I also note, and the Court
2 is familiar with this, there have been two other cases
3 involving the same core group of facts and circumstances that
4 have been filed by Ms. Harnden, and the Court has already
5 ruled on both of those with an initial report and
6 recommendation from Your Honor.

7 And then both of those cases have gone up to Judge
8 Goldsmith, and a ruling has been issued on both of those. I
9 believe I cited one of those in my motion, after my motion
10 was submitted and all the paperwork was done, and the
11 briefing was done on that.

12 There was a second decision by Judge Goldsmith which
13 addressed this identical issue and held that the claims were
14 barred by the statute of limitations.

15 And so I believe this would be the third time that
16 this issue is before Your Honor, and I believe the
17 circumstances are identical. The statute of limitations
18 defense clearly applies to both of these lawsuits.

19 THE COURT: Now, the parties have not been the same
20 in each suit, have they? In fact, they're not even the same
21 in these two suits.

22 MR. SHOUDY: Correct, Your Honor. So the plaintiff
23 is the same, the background facts, if you will, are the same,
24 but the defendants in all four separate lawsuits have been
25 different.

Harnden v. St. Clair County 31st District Court

1 And so, the circumstances that have been alleged are
2 based upon events that largely came to a conclusion at the
3 very latest by March 15, 2010.

4 There's a couple of claims that spill over into 2011
5 as to specific defendants. Either way, the lawsuits were
6 filed in November of 2016. There was a three-year statute of
7 limitations, which is the longest statute of limitations as
8 to any of the claims. Some of the claims would be subject to
9 a two-year. The claim based upon the Michigan Freedom of
10 Information Act claim would be 180 days statute of
11 limitations.

12 All of these claims, the statute of limitations ran
13 several years before the lawsuits were filed, and that's the
14 primary argument in both cases.

15 I also raised some additional arguments, but I think
16 I'll let the briefs stand, unless the Court has any questions
17 on those.

18 THE COURT: You know, I would actually, even though
19 I know that we're really looking at the pleadings here for
20 the most part because the dates were contained in the
21 pleadings, but nevertheless, I mean, even though it is, as
22 you point out, the fourth such case -- third and fourth such
23 cases that I've had before me in the last year and-a-half or
24 so, if you would give me a little bit of a thumbnail sketch,
25 and I don't normally do this, of the facts, understanding

Harnden v. St. Clair County 31st District Court

1 that the two sides don't agree with what the facts are, of
2 course, but -- and ultimately telling me the facts as pled by
3 the plaintiff and ultimately what the outcome was, and when
4 you believe the outcome became definitive.

5 MR. SHOUDY: I believe the background facts start in
6 October of 2008, and the background facts center around what
7 basically was a DHS investigation, Child Protective Services,
8 that then involved some of the plaintiff's minor children.

9 The plaintiff had some biological children, some
10 adopted daughters and some foster children, and an
11 investigation started in 2008. There was an arrest made of
12 the plaintiff's then 15-year-old son. I think he's referred
13 to in the complaint as "Bobby."

14 THE COURT: He was a natural child or a foster
15 child?

16 MR. SHOUDY: A natural child, I believe, Your Honor.

17 THE COURT: Okay.

18 MR. SHOUDY: And again, Your Honor, I've gone based
19 upon the complaint. I have read the police reports as well,
20 but -- and then the claim in the lawsuit is that the -- when
21 DHS became involved, they removed some of the children.

22 The normal process is when Child Protective Service
23 gets involved, and then the Sheriff's Department gets
24 involved, one or the other will start a petition process
25 before the Court to determine where the child should be

Harnden v. St. Clair County 31st District Court

1 placed, and then there is a probable cause hearing to
2 determine whether or not there was probable cause to support
3 the petition, which is the request to remove a child from
4 harm's way.

5 So what the case centers around is the removal by
6 the officers, and the Child Protective Services who are --
7 who were parties to the earlier cases, and then the case is
8 prosecuted as to the issue involving the 15-year-old son.

9 The prosecuting attorney's office also represents
10 the DHS in termination proceedings, so you have a prosecuting
11 attorney involved in court proceedings, representing the
12 state, and then you have the judges who are handling all of
13 those matters, go through multiple levels.

14 There's hearings on multiple children. There's an
15 investigation on multiple children, and ultimately, all of
16 the proceedings according to the complaint, end by, I believe
17 the day is March 15, 2010.

18 So that's --

19 THE COURT: What's March 15th of 2010?

20 MR. SHOUDY: Correct. So that would be the last
21 event of when all of the court proceedings are concluded.

22 THE COURT: That's the conclusion of the second
23 trial, right?

24 MR. SHOUDY: Correct.

25 THE COURT: And what's the outcome?

Harnden v. St. Clair County 31st District Court

1 MR. SHOUDY: Your Honor, I'm not sure on that, to be
2 honest with you. I kind of lost track of --

3 THE COURT: Is there an acquittal? Is everybody
4 clear of these charges, ultimately?

5 MR. SHOUDY: I believe the proceedings are completed
6 there. I thought there was a jury decision that found that
7 the -- by a preponderance of the evidence there was
8 sufficient basis to support the petition regarding the child.

9 But a lot is going on during that whole process as
10 well. So basically, it's all over by the 15th. I don't
11 believe there's any further legal proceedings after the 15th
12 of March, 2010.

13 And then there is a claim in the lawsuit against the
14 Sheriff's Department, and after that was concluded, there was
15 a Freedom of Information Act request that was initially --
16 you know, some information was provided, and that would have
17 been 2011. And then there was also in 2011, I believe there
18 was a request for a copy of the transcript from the trial,
19 which is the basis of the claim against the court reporter,
20 Ms. Regan.

21 So all of the events claimed in the lawsuit, none of
22 them go into 2012. Everything raised in the lawsuit is over
23 at the very latest by 2011 as to most of the plaintiff's --
24 or most of the defendants.

25 THE COURT: What's 2011? What happened then?

Harnden v. St. Clair County 31st District Court

1 MR. SHOUDY: I believe she indicates in her
2 complaint that she requested a copy of the transcript, and
3 the court reporter for the court was slow in providing the
4 transcript. The final transcript was not provided until
5 sometime in 2011, I believe is the allegation.

6 THE COURT: Now, as to the court reporter, I'm
7 leaving aside the statute of limitations issue for a minute.

8 MR. SHOUDY: Yes.

9 THE COURT: As to the court reporter, she's not
10 entitled to absolute immunity, just qualified immunity,
11 correct? She or he. I don't know whether --

12 MR. SHOUDY: Right, correct. Except with one
13 proviso, Your Honor.

14 THE COURT: It's a she, isn't it?

15 MR. SHOUDY: It is a she. It's Christine Regan, I
16 believe.

17 THE COURT: Right, Christine Regan.

18 MR. SHOUDY: The only exception to that is she would
19 be -- judicial immunity would apply to the extent she's --
20 you know, there's a claim that there was a conspiracy, that
21 the Judge was involved in the conspiracy, directing her to do
22 something.

23 So to the extent there is a conspiracy claim against
24 her involving the Court, and she is acting in her role as the
25 court reporter, and is allegedly being given directions from

Harnden v. St. Clair County 31st District Court

1 the Court, then arguably, there would be judicial immunity.
2 But normally, there would not be. It would normally be
3 qualified immunity.

4 THE COURT: Was she show-caused for that?

5 MR. SHOUDY: I don't believe so, Your Honor. I'm
6 not aware of that, no. It's not alleged in the complaint.

7 THE COURT: Under what circumstances would a court
8 reporter be not immune? Let's put it that way. What types
9 of things could a court reporter do that would make them
10 subject to suit?

11 MR. SHOUDY: Well, I -- I did cite to the Court, the
12 United States Supreme Court decision that's referenced in the
13 brief, and if the court reporter --

14 THE COURT: Which is what I'm looking for as we
15 speak.

16 MR. SHOUDY: -- fails to follow -- I believe --
17 yeah. The case I believe dealt with a situation where --

18 THE COURT: *Antoine versus Byers*, that one?

19 MR. SHOUDY: Correct. Correct, Your Honor.

20 And if I recall that case, the Supreme Court dealt
21 with the situation where somebody's rights were allegedly
22 prejudiced, their constitutional rights were prejudiced by
23 the court reporter not providing a transcript.

24 I believe there was all kinds of issues in that case
25 with the, you know, the court reporter lost tapes, was unable

Harnden v. St. Clair County 31st District Court

1 to provide a transcript, complete transcript, had to use
2 notes, that kind of thing. So that was an unusual
3 circumstance.

4 In this case, what we have is a claimed delay in the
5 transcript, but there is no claim that any constitutional
6 rights were somehow implicated by that.

7 THE COURT: Was that -- well, I guess there was a
8 criminal case -- maybe not.

9 MR. SHOUDY: Yeah, that was the -- I believe that
10 was from the termination proceedings or the petition to
11 determine whether or not there was probable cause on the
12 petition involving the children.

13 And I apologize, Your Honor, I didn't -- it's kind
14 of a complicated fact pattern. I wasn't part of that when it
15 happened. And I'm going based upon the allegations of the
16 complaint. And I have read some materials, as well.

17 I believe this is a -- you know, based upon the
18 allegations of the complaint, you know, I tried to address
19 those in my pleadings with the Court.

20 THE COURT: The other thing I would like you to
21 address, it's raised in the -- in Ms. Harnden's brief, is the
22 question of the referee's jurisdiction. She mentions that
23 the referee issued a pickup order. I'm not sure if that was
24 in conjunction with the circuit court judge or not.

25 And then it was outside of St. Clair County, but

Harnden v. St. Clair County 31st District Court

1 instead, I believe required pickup in Sanilac, if I got this
2 right, and therefore, was outside the jurisdiction. And
3 therefore, she argues that he's not entitled to immunity
4 because he was essentially acting ultra vires, he was acting
5 outside of the realm of his authority.

6 MR. SHOUDY: Yes, Your Honor. Let me address that.

7 So Ms. Harnden, as I understand it, lives in St.
8 Clair County. That was the residence of the children at
9 issue. The Court has jurisdiction over child protection
10 issues within St. Clair County. I cited the statute to the
11 Court on that, to that effect.

12 And I believe the pickup order was actually entered
13 by the circuit court -- or the district court judge, which I
14 believe was one of the two district court judges. I can't
15 recall which.

16 THE COURT: Are Brown and Tomlinson both district
17 court judges?

18 MR. SHOUDY: Yes. They would be state district
19 court judges.

20 THE COURT: All right.

21 MR. SHOUDY: One I believe is -- I believe one is --
22 or both of them are probate judges, but they function as a
23 district court judge as well.

24 And so the pickup order was to pick up the child,
25 but there is nothing that would prohibit somebody from

Harnden v. St. Clair County 31st District Court

1 crossing a county line to pick up a child. There is nothing
2 that would prohibit that order from being enforced throughout
3 the state of Michigan as a state court judge.

4 THE COURT: And you said there's nothing that
5 required them to go across the county line?

6 MR. SHOUDY: Well, the -- as I understand the
7 residence, it's fairly close to the county line, but the
8 children went to Cros-Lex Community Schools, which is in
9 Sanilac County.

10 So if they were picked up at school, they would be
11 picked up in Sanilac County, but there is nothing that would
12 prevent a pickup order from crossing a county line.

13 And then second of all, I would state that the
14 doctrine of judicial immunity is not lost when there is some
15 question about jurisdiction. It's only when somebody acts,
16 when a judge acts in the complete absence of jurisdiction.

17 Otherwise, state court judges would always be
18 subject to liability any time they make a judgment call about
19 their jurisdiction and a court later determines that they
20 didn't have the jurisdiction.

21 That's not one of the exceptions. The exception to
22 judicial immunity is a very narrow one. It does not go that
23 broadly.

24 THE COURT: So in other words, this pickup order is
25 -- does it kind of get put in something like a LEIN system

Harnden v. St. Clair County 31st District Court

1 essentially, where it's issued in a particular county,
2 because it has to be issued somewhere, but then it's
3 statewide from that point on?

4 MR. SHOUDY: Yes. Yeah, usually pickup orders would
5 be entered into -- that type of order would be entered into
6 the LEIN system, which is a state system, which would be
7 statewide.

8 THE COURT: As you might not be surprised to hear,
9 in federal court, we don't issue those, so it's not our
10 normal bailiwick.

11 Anything else you want to tell me?

12 MR. SHOUDY: No, Your Honor. If there's any
13 additional questions you have, I would be happy to answer
14 those.

15 THE COURT: Well, I'll give you some time for
16 rebuttal after Mrs. Harnden is done.

17 MR. SHOUDY: All right. Thank you, Your Honor.

18 MS. HARNDEN: I have never done this before.

19 THE COURT: Okay. Come right up to the microphone,
20 and speak loudly so everybody can hear you.

21 MS. HARNDEN: Okay.

22 THE COURT: And I know the courtroom setting could
23 be a little bit intimidating, and that's -- we're friendly
24 here, so it's all right.

25 MS. HARNDEN: So I just answer basically -- address

Harnden v. St. Clair County 31st District Court

1 what he -- or do I answer --

2 THE COURT: Well, why don't you first of all come
3 really right up to the microphone, because this -- the
4 courtroom acoustics are terrible, so -- but why don't you
5 tell me what you want to tell me about this case. And then
6 I'll have some questions.

7 MS. HARNDEN: Okay. Well, first in regard to --
8 I'll just address what he mentioned. In regard to the
9 statute of limitations, I also did put in my replies about
10 the *Hayden v. United States*, where they do allow for civil
11 cases to toll or freeze while criminal proceedings or
12 investigations are warming up or under way. That way the
13 constitutional rights of everyone are not being violated.

14 And yes, the case -- our initial case with DCS
15 opened on October 20, 2008. But we went to the FBI in
16 January of 2010, and they did open a criminal investigation
17 into most of the people who are listed on these two cases, as
18 well as the other case that -- 13906.

19 Therefore, I cited *Peden* because I didn't -- I would
20 like justice. I'm fighting for justice for my family. So
21 I'm not going to ask the court systems to violate the
22 constitutional rights of other people, and compromise those
23 by having civil cases filed at the same time as the criminal
24 investigation was warming up or underway.

25 So I did not receive a phone call from FBI agent

Harnden v. St. Clair County 31st District Court

1 Danielle Christianson until November 12, 2014, in which she
2 told me that they were not able to get warrants from the U.S.
3 Attorney's office, therefore, she had to close the case, and
4 then advised me that I could now proceed with civil
5 proceedings if I chose to.

6 So my first case that I filed was in November of
7 2015. These cases were November 2016, which are clearly
8 within the three-year statute of limitations from the closing
9 of the criminal investigations.

10 THE COURT: And I understand you made that argument,
11 in -- and I think you understand, previously I did a report
12 and recommendation which rejected that argument, and that
13 Judge Goldsmith agreed with that, because there is no
14 authority that I'm aware of whereby the FBI investigation
15 would toll the statute of limitations.

16 You understand the concept of tolling, because I
17 think you've addressed it in your briefing.

18 So I understand there was an investigation going on,
19 but what kept you during that time from filing a lawsuit, and
20 basically saying, "This investigation is taking too long. My
21 statute is about to run out. I've got to file, and I'm
22 filing."

23 MS. HARNDEN: Because they -- we were advised by
24 attorneys, and by the FBI, that the civil proceedings were
25 not supposed to go on at the same time as criminal

Harnden v. St. Clair County 31st District Court

1 proceedings.

2 THE COURT: Do you have any legal authority, though,
3 that the FBI investigation tolls the running of the statute
4 of limitations?

5 MS. HARNDEN: Basically, just -- the only one I
6 could really find was the *Peden*, and it's -- just brief
7 pieces out of it, if I can find the right spot. I do not
8 find the right spot.

9 Anyway, it refers to warming up and being -- the
10 cases -- the investigation being warming up and under way.

11 It's on page six, page ID 171:

12 "We believe it has long been the practice to
13 freeze civil proceedings when a criminal
14 prosecution involving the same facts is warming up
15 or underway.

16 In the context of appeals from civil service
17 adverse actions, we have repeatedly approved this
18 practice. The freeze, we think is not for the
19 protection of the employee only, but rises out of
20 the sense that a defensible civil proceedings
21 constitute improper interference with the criminal
22 proceedings if they turn over the same evidentiary
23 material."

24 And it goes on to say there at the end that,

25 "We agree with this flexible approach and

Harnden v. St. Clair County 31st District Court

1 believe it is particularly appropriate where
2 constitutional issues -- or constitutional rights
3 are an issue."

4 And as the FBI is the -- basically the investigating police
5 for the federal government, we just assumed that a criminal
6 investigation by them would be the same as a criminal
7 investigation by a lower police, law enforcement.

8 THE COURT: In Michigan, there's a tort called
9 conversion. And conversion basically is a fancy way of
10 saying stealing.

11 Let's say someone stole something from you, and the
12 police are investigating and they investigated for a year,
13 two years, three years. But of course, the statute of
14 limitations for conversion is like two years.

15 What would there be to prevent you from filing your
16 civil case for conversion, despite the fact that the police
17 were dragging their feet in investigating?

18 MS. HARNDEN: Well, the police weren't dragging
19 their feet. The dragging was coming from the U.S. Attorney's
20 office with not issuing the warrants that we requested.

21 Other than that, we did have a fear of retaliation
22 from the people whom we would be filing the lawsuits against.
23 We actually were advised at one point -- the FBI did ask the
24 Michigan State Police to call us. I talked to Trooper
25 Danielle Craig, and when she called and I described the

Harnden v. St. Clair County 31st District Court

1 situation, she advised us to move out of the county for our
2 safety. And unfortunately -- and she also said she was going
3 to forward that through the Michigan State Police Department,
4 but nobody ever picked that up.

5 So when we went back to the FBI, we had satisfied
6 the statutes under RICO, so that, you know, we went to the
7 local law enforcement and they wouldn't help us out. So we
8 went back to the FBI and they continued to keep it open. But
9 fear for our family.

10 THE COURT: Now, these two lawsuits that are at
11 issue today were both filed November 3rd of 2016.

12 The first question I guess I have is, why two
13 lawsuits and not one at that time, since they were both filed
14 the same day and I think you have case numbers that are one
15 digit apart?

16 MS. HARNDEN: Yeah. I did that separately because
17 we -- they're in their individual capacities because, yes,
18 they all work for the same department, but each person has an
19 individual responsibility for the things that they did.

20 I did it all together like based on department. As
21 you can see, the 13904, and envelopes the people who work at
22 the St. Clair County Sheriff's Department. And I put the
23 prosecutor's office in there as they're the top law
24 enforcement agency in the -- or the law enforcement agency.

25 And then I kept the court's together just for, I

Harnden v. St. Clair County 31st District Court

1 guess, simplicity. And also, so that the cases weren't even
2 bigger than -- you know, the complaint wasn't even bigger
3 than what they were.

4 THE COURT: Now, in the prior two lawsuits, one of
5 which was initially filed in the name of your husband, I
6 guess, Robert, and the children, et al, and I think it
7 included you as well, and that was docket number -- or case
8 number 15-12738.

9 I issued two reports and recommendations in that
10 case, and ultimately that led to the dismissal of that case,
11 which -- because Judge Goldsmith accepted those.

12 And those -- the last of those reports and
13 recommendations was filed April 11th of 2016. But then these
14 lawsuits got filed, alleging many of the same theories just a
15 few months later in November of the same year.

16 And I'm -- I believe in that case, among other
17 things, I noted that, for example, kidnapping is not a cause
18 of action. Statute of limitations was a problem because more
19 than three years had passed since the last event and so
20 forth.

21 Why are these any different? Why should -- I have
22 to try to be consistent with what's been done before, and so
23 why should you be able to file these after already hearing
24 from the Court on those?

25 MS. HARNDEN: Well, I have a lot of -- I've learned

Harnden v. St. Clair County 31st District Court

1 a lot, running -- doing the first ones. I'm not an attorney.
2 And I also found different case precedents to use and, you
3 know, kind of learned what I was and was not supposed to have
4 in complaints and in replies and all that.

5 So I felt with learning, you know, from my mistakes
6 in the first one, finding new case precedents and other
7 opinions that I felt helped to bring my cause, that is why I
8 wrote the next three. And it takes time.

9 THE COURT: I know, because I've practiced law for
10 25 years. My concern -- and do you prefer I call you Ms.
11 Harnden, Mrs. Harnden?

12 MS. HARNDEN: Mrs. I am married, so --

13 THE COURT: Okay. Mrs. Harnden, the -- my concern
14 is that if I -- if it turns out that there is not enough
15 different here, and I'm going to look at the authority you've
16 cited, of course, --

17 MS. HARNDEN: Uh-huh.

18 THE COURT: -- but if it turns out that the law is
19 just against you on the statute of limitations, that there's
20 nothing about the FBI investigation that would have tolled
21 the statute and that the statutes are clearly, for lack of a
22 better term, blown, --

23 MS. HARNDEN: Uh-huh.

24 THE COURT: -- and then I have to recommend yet
25 again to Judge Goldsmith that the cases should be dismissed,

Harnden v. St. Clair County 31st District Court

1 my concern is that if you continue to file, that at some
2 point the Court might sanction you or do something drastic,
3 because at some point, the Court loses its patience.

4 And I don't want to say that happened. The normal
5 -- the normal course of action is if you disagree with the
6 Court and you think the Court got it wrong, you file an
7 appeal.

8 MS. HARNDEN: Uh-huh.

9 THE COURT: And there is a court above us. They are
10 actually geographically below us because they are in
11 Cincinnati. And so that's why I'm trying to see what the
12 distinctions are, other than the fact that you are better
13 educated in the process.

14 Is there anything beyond that that makes these
15 different?

16 MS. HARNDEN: Well, one thing that I found this last
17 week was the constitutional and implied right to action.
18 Yes, there is no -- I have not found, as you said, any
19 straight up -- yes, Congress does not have the statute that
20 says you can sue for kidnapping in the civil, because, you
21 know, kidnapping is over here on the criminal code.

22 But as I stated -- I'm sure I stated in one of my
23 briefs, most people who kidnap are in jail, and when people
24 are in jail, you cannot sue them civilly.

25 In our case, the kidnapping was substantiated by the

Harnden v. St. Clair County 31st District Court

1 FBI, but no one has been arrested. And therefore, we aren't
2 -- since the criminal avenue has closed for us, we went the
3 civil avenue. And I want to say it was *Bivens v. Six Unnamed*
4 --

5 THE COURT: Six agents.

6 MS. HARNDEN: Yeah. unknown agents.

7 THE COURT: Yes, it's a very famous case.

8 MS. HARNDEN: Yes. And in that, it does talk about
9 constitutional rights of action, and an implied right to
10 action. And I would have to say that in these cases, my
11 right to action is based on constitutional violations and
12 would be implied because there is no set statute. There is
13 no set statute.

14 THE COURT: Well, one of the things that I addressed
15 in the -- at least the last of the report and recommendations
16 that I did, is the issue, and I think I might have done it in
17 all of them, is that there is a common law cause of action
18 that you can allege against people. It's not kidnapping, but
19 it's a lot like it. It's called false imprisonment.

20 MS. HARNDEN: Right.

21 THE COURT: But that again has a statute of
22 limitations, and it's two years, I believe, in Michigan.

23 MS. HARNDEN: I think so.

24 THE COURT: And so, you know, when did that false
25 imprisonment, if we call it that, occur?

Harnden v. St. Clair County 31st District Court

1 MS. HARNDEN: For the -- well, it would end -- the
2 last child came home December 14, 2009. The criminal
3 investigation was opened January 2010.

4 But there's also the -- basically, kidnapping falls
5 under the Fourth and Fourteenth Amendment, where I have a
6 right to security in my persons, and my property and my --
7 and which would be my children at that time, because I'm
8 responsible for them.

9 And they did not have -- they were not secure. And
10 they were taken from me without signed pickup orders, without
11 an officer of the law, and out-of-county.

12 THE COURT: And as you -- I think you know from my
13 last report and recommendation -- and I -- because you know,
14 when we're looking at these things, we're not deciding --
15 it's not a trial, so we're not deciding you're right, or
16 they're right, or what you say is true or what they say is
17 true.

18 But my last report and recommendation which was
19 issued in May of this -- May 31st of this past year, in case
20 number 16-13906, as I noted:

21 "In reviewing the motion to dismiss, plaintiff's
22 factual allegations are assumed to be true, and if
23 in fact they are true, --"

24 I wrote,

25 "-- the plaintiff has generally alleged what can

Harnden v. St. Clair County 31st District Court

1 accurately be described as a nightmare, and
2 namely, a several-year battle with government
3 officials based upon false accusations of child
4 neglect and abuse, all of which terminated in her
5 and her husband ultimately being vindicated
6 through multiple administrative and judicial
7 proceedings."

8 But the issue, when we're talking about the statute of
9 limitations is whether it's too late to make that case. Even
10 if you're right, and even if I sympathize, and even if I were
11 to think all this was true, and I don't know, because we
12 haven't had a trial. But even if true, essentially we're
13 saying with the statute of limitations it's too late to make
14 that claim. There was a time sometime earlier where you
15 could have, and we might have been able to flush that out.

16 And again, why, if the children were returned in
17 December of 2009, and now it's approaching December 2017,
18 which is quite a few years later, eight years later, why
19 would that be permissible at this late date?

20 MS. HARNDEN: All I have is *Peden*, where they --
21 just to protect the civil rights of all parties, because that
22 is why they have a normal practice of allowing a freeze or a
23 tolling while criminal investigation is under way.

24 THE COURT: The other thing, as you know from the
25 motion, beyond the statute of limitations, even if I were to

Harnden v. St. Clair County 31st District Court

1 agree with you that somehow the statutes are tolled and it's
2 not too late to have filed, the defendants have also said
3 that they are immune from suit.

4 MS. HARNDEN: Uh-huh.

5 THE COURT: And when you disagree with what a judge
6 does, as I said, you go to the Court of Appeals. You can do
7 that. There's a remedy. And for good reason, the courts
8 don't condone suing judges. It's very hard to do. Just like
9 it's very hard to sue the president or a member of congress.

10 What takes this in any special direction that would
11 allow you to do that? Let's say -- let's start with the
12 judges that you have sued.

13 MS. HARNDEN: The judges, I -- in regard to Mr. --
14 Judge Tomlinson, he was the first one that allegedly signed
15 the pickup order on October 20th or 21st of 2008.

16 It is a St. Clair County Circuit Court. And every
17 law enforcement officer -- my father is a police officer, my
18 brother is a police officer, and when I ask them, "Hey, can
19 you take a court order from one county into another," the
20 answer is "no."

21 And they also are supposed to have the specific
22 address where they are to be picked up. And they are also
23 specifically to describe the person and/or thing that I
24 suppose in this case, the persons that are to be seized.

25 That was not done. There is no specific address,

Harnden v. St. Clair County 31st District Court

1 which, you know, I don't even know if they had the address,
2 but from what I understand the CPS worker called the school
3 and asked them to keep my daughter off the bus.

4 And I did not see the first copy of the pickup order
5 until December 6th of 2008, and I had to purchase one
6 December 11, 2008. I was never given a copy of the pickup
7 order when they took my children from me.

8 My daughter was seven at the time. She was at
9 school. She was scared. And she did not know the people to
10 whom she was going. The pickup order was not filled out.
11 There was no address on it, which was a clear violation of
12 the Fourth Amendment.

13 She was not specifically described. Our other
14 daughter at the time was 15. They did take her from inside
15 the county, but again, there was no address. They just
16 showed up at the house to which they told me to take her the
17 night before. They just showed up and took her. And I had
18 no clue where my children were until I got a phone call at
19 5:19.

20 THE COURT: Which, as I said, is every parent's
21 nightmare.

22 MS. HARNDEN: Yeah.

23 THE COURT: But assuming all that to be true, and
24 assuming that there's a constitutional violation, I think
25 you've clearly understood it, that comes under Title 42 of

Harnden v. St. Clair County 31st District Court

1 the United States Code Section 1983, or otherwise known as
2 "1983 claims," where you sue for violation of federal
3 constitutional rights. Those you have, but you would agree
4 that the statute of limitations for that is three years,
5 isn't it?

6 MS. HARNDEN: Yes.

7 THE COURT: Okay. And again, we're back to the same
8 problem. If nothing tolls that statute, then even if all
9 true, and even if these would have been claims that you could
10 have filed a long time ago back in 2012, let's say, and even
11 if they would have been successful claims, it would be too
12 late now, wouldn't it?

13 MS. HARNDEN: If the kidnappings criminally has no
14 statute of limitations, we assume that there is no statute of
15 limitations civilly as well. It wouldn't make sense to have
16 a different statute for one than the other.

17 And also in the 3299, it has that little word "or"
18 and when I looked up the definition of "indictment" and of
19 "information," one of them is for bringing a -- basically
20 it's a civil suit, because it's for righting a wrong that has
21 been done. And the other one is a formal criminal charge.

22 And so it would be under our understanding that if
23 there's no statute of limitations for kidnapping criminally,
24 there would be no statute of limitations for kidnapping
25 civilly, which would then, since my child -- my first two

Harnden v. St. Clair County 31st District Court

1 children were kidnapped on October 21st of 2008, everything
2 after that would be allowed.

3 THE COURT: Well, would you agree with me that
4 since, because I think you have already conceded that the
5 federal statute doesn't permit a civil action for kidnapping
6 --

7 MS. HARNDEN: Uh-huh.

8 THE COURT: -- because it's a criminal code statute.
9 And then we discussed a few moments ago the fact that there's
10 a common law claim for false imprisonment under state tort
11 law, but that does have a statute of limitations, doesn't it?

12 MS. HARNDEN: Yes, uh-huh.

13 THE COURT: Two years. I thought you already
14 conceded that as well. So how can I ignore that, I guess, is
15 the -- the question.

16 MS. HARNDEN: Well, because kidnapping is the lead
17 charge and kidnapping doesn't have -- and you go back to the
18 implied cause of action. Kidnapping is the implied cause of
19 action at the very beginning. And civilly -- or criminally,
20 it has no statute of limitations. Why would it have a
21 statute of limitations civilly?

22 THE COURT: Why would these -- the two judges that
23 you sued, not have -- well, let me ask you this.

24 Would you agree that the two judges that you have
25 sued were acting in their official capacities when they

Harnden v. St. Clair County 31st District Court

1 signed the orders with which you disagree, even if they were
2 wrong?

3 MS. HARNDEN: Right. Signing a pickup order, yes,
4 would be in their official capacity.

5 However, one would assume that a judge, especially
6 one sitting in practice, you know, being the chief jurist,
7 would make sure that the pickup order that he's putting his
8 name on is in correct order before he signs it.

9 And by not making sure that it was signed and in
10 correct order with all the descriptions on there, he's not --
11 he's acting outside his judicial capacity because he did not
12 make sure that procedure was done.

13 THE COURT: Well, he's made a mistake at any rate.

14 MS. HARNDEN: And it was out of --

15 THE COURT: When does it cross the line from mistake
16 to acting outside --

17 MS. HARNDEN: Well, you're -- the constitution is
18 very clear in the Fourth Amendment that it has to
19 specifically describe the persons and things that are to be
20 seized.

21 And if he's signing an order of which the specifics
22 are not on there, that -- I believe it was in *Bivens* as well,
23 that just when you're acting in that capacity as an officer
24 of the law, you're expected to know.

25 And they take oaths and they know what they're

Harnden v. St. Clair County 31st District Court

1 doing. And you would think that he would know that it's his
2 job to make sure that if he's ordering the seizure of my
3 children, that that order would be in proper order.

4 THE COURT: Now, in the report and recommendation
5 that I did in case number 16-13906, dated May 31st of this
6 year, on page two, I wrote:

7 "More specifically and pertinent to this
8 motion, she, --"
9 meaning you,

10 "-- alleges that March 15th, 2010, the date on
11 which the government's second case against them
12 was closed, concludes the nightmare that we had
13 lived for 17 months."

14 Would you agree that that is the date in which the nightmare
15 that we've been talking was concluded?

16 MS. HARNDEN: Yes.

17 THE COURT: And why don't you tell me a little bit
18 about the claim against the court reporter? How long was the
19 transcript held up, Mrs. Harnden?

20 MS. HARNDEN: It was either 17 or 19 months.

21 THE COURT: And did the court have to do anything to
22 pry that out of the court reporter as I've seen some judges
23 do at times?

24 MS. HARNDEN: That I'm aware of, I do not know.

25 THE COURT: Do you know what the cause of the delay

Harnden v. St. Clair County 31st District Court

1 was?

2 MS. HARNDEN: She would say that her computer
3 crashed. She would say that she was sick, they lost the
4 audio, just various things like that.

5 But in the meantime, she was supplying me with the
6 other transcripts that I had ordered.

7 THE COURT: Did you ultimately get this transcript,
8 though, you said 17 or 19 months?

9 MS. HARNDEN: Yeah, it was either 17 or 19 months.
10 I can't remember.

11 THE COURT: And was there any consequence to you
12 from not getting the transcript in a timely fashion, besides
13 frustration?

14 MS. HARNDEN: At the time we were filing grievances
15 with the Michigan State Attorney General's office against
16 most of the people that are on -- between all three cases,
17 you know, whoever they had, and we couldn't file those until
18 we received that.

19 THE COURT: Were you able to ultimately file them,
20 though?

21 MS. HARNDEN: Yes.

22 THE COURT: And none of those grievances were denied
23 on the basis of that you had waited too long?

24 MS. HARNDEN: No. They were denied because the
25 division chief, Mr. Cunningham, I believe his name is, he

Harnden v. St. Clair County 31st District Court

1 said that since the FBI is involved, I need to take it back
2 to the FBI.

3 THE COURT: So they were essentially denied on the
4 merits, not because it had anything to do with the
5 transcript, per se?

6 MS. HARNDEN: Yeah, just because he said the FBI was
7 involved. He didn't even ask for anything from me. He just
8 said, "Go back to the FBI."

9 THE COURT: If you don't mind my asking, are you
10 employed outside the home?

11 MS. HARNDEN: No.

12 THE COURT: Have you ever thought about law school?

13 MS. HARNDEN: I was told when I was a child to be a
14 lawyer.

15 THE COURT: Okay. Well, it's never too late.

16 And of all these defendants that you've named in
17 these current two lawsuits, is there anything that any of
18 them did to you, let's say, any bad act that any of them have
19 done to you or anything that you believe makes them incur
20 liability to you that occurred after November 15th of 2010?

21 MS. HARNDEN: November 15th of 2010? You mean,
22 March 15th of 2010?

23 THE COURT: I'm sorry. March 15th.

24 MS. HARNDEN: No. Not after that date, no.

25 Yes. I take that back. The probate judge -- when I

Harnden v. St. Clair County 31st District Court

1 filed the grievance at the Michigan Bar Association against
2 the guardian ad litem, I received a phone call from a
3 detective in the Port Huron City Police Department, and he
4 wanted me to come to Port Huron, because obviously I'm
5 outside of the jurisdiction, to discuss what I took to the
6 attorney grievance commission when I filed my complaint
7 against the guardian ad litem.

8 I asked him -- initially I agreed to go. I was very
9 apprehensive about that. It just didn't feel right. So he
10 set up a meeting with me on July 3rd -- I don't remember the
11 exact date, but July, I don't remember the year. But he
12 ended up not being there.

13 And during one of our previous phone calls, I asked
14 him, you know, who gave this case to you? Why are you
15 calling me? And the order came from the probate judge to
16 find out -- or the probate court to find out what I had and
17 what I took to the attorney grievance commission against the
18 guardian ad litem.

19 THE COURT: But we don't know when that happened?

20 MS. HARNDEN: What's that?

21 THE COURT: This event that you're describing.

22 MS. HARNDEN: I can't remember the year. I want to
23 say it was 2012. I'm not positive. I mean, I could look it
24 up later and let you know. But at this point, I do not
25 remember.

Harnden v. St. Clair County 31st District Court

1 THE COURT: At any rate, that event is not anything
2 alleged in this lawsuit?

3 MS. HARNDEN: No.

4 THE COURT: Anything further that you would like to
5 tell me?

6 MS. HARNDEN: I think I've covered it all.

7 THE COURT: Okay. Thank you very much.

8 MS. HARNDEN: Thank you.

9 THE COURT: Okay. Mr. Shoudy, anything on rebuttal?

10 MR. SHOUDY: No, thank you, Your Honor.

11 Just I will say I had the same suggestion to Ms.
12 Harnden, that it's never too late to start a second career
13 there. So I had the same suggestion. But --

14 THE COURT: We see a lot of people who are without
15 attorneys here and most of them are, you know, not quite as
16 well spoken as Mrs. Harnden has been. It's made for a
17 meaningful oral argument.

18 MR. SHOUDY: Just if I could respond to a couple of
19 her arguments that she raised regarding the statute of
20 limitations.

21 She has termed or used the word, you know,
22 "kidnapping" as the basis of her claim. I believe the Court
23 has addressed this in both of the prior cases and I agree
24 with the Court's conclusion, that it was the exact same
25 argument I raised in both motions that the kidnapping statute

Harnden v. St. Clair County 31st District Court

1 -- or the federal kidnapping statute does not create an
2 independent cause of action. It is a criminal statute which
3 doesn't apply in this case.

4 And what we really have is an arrest by a police
5 officer, and then we have a child that was picked up pursuant
6 to an order from the court designed to try to protect the
7 child who the court had determined there was probable cause
8 to determine that there was potential harm.

9 So what we have really is, even though it's called
10 "kidnapping," it is -- at best, it's a constitutional claim,
11 which would be subject to a three-year statute of
12 limitations.

13 I believe in one of her reply briefs she did mention
14 interference with a familial relationship that, of course,
15 would be a separate constitutional claim, which would be a
16 three-year statute of limitations, and as the Court has
17 indicated, it could be a false arrest claim as to the son,
18 which would be the son's cause of action. That would be
19 subject to a two-year statute of limitations.

20 It could be a claim of false imprisonment, which
21 would be a two-year statute of limitations.

22 THE COURT: Interference with a familial
23 relationship, you said that's a statutory claim?

24 MR. SHOUDY: That's actually a constitutional claim
25 based upon, I believe, the liberty interest set forth in the

Harnden v. St. Clair County 31st District Court

1 -- in the United States Constitution, I believe that's a
2 Fifth Amendment.

3 THE COURT: Okay. But it indicates it comes under
4 1983.

5 MR. SHOUDY: Correct. It would be subject to a
6 three-year statute of limitations as well. So all of her
7 claims, all of her constitutional claims would be subject to
8 a three-year statute of limitations. And her state law
9 claims of that nature would be subject to a two-year statute
10 of limitations.

11 And her only argument that she could raise is that
12 there is some argument that the statute was tolled for one
13 reason or another. Tolling is something that is determined
14 by state law, and Michigan has a tolling statute. And none
15 of the provisions in the tolling statute apply to the
16 pendency of a criminal investigation.

17 In the cases that Ms. Harnden is relying upon, I
18 believe she is actually confusing a couple of different
19 issues. One is tolling of a statute. The cases that she's
20 relying upon are cases that talk about a court's power to
21 stay a civil case where there is a criminal case pending.

22 But in those cases, you would already have a lawsuit
23 filed, and the court may stay the criminal case from
24 proceeding to allow the criminal case to complete.

25 So that is a totally different situation. That

Harnden v. St. Clair County 31st District Court

1 issue was raised in the prior cases and that was rejected by
2 both the magistrate and by Judge Goldsmith for those reasons.
3 That is a different situation. So I think she is confusing
4 two different concepts.

5 So basically it's very clear that the statute of
6 limitations has run. The fact, that a lot of the
7 individuals, even the claims against some of the officers,
8 you know, those would have accrued in 2008.

9 But the last possible event that's relied upon is
10 2010 as to the court reporter, the transcript in 2011. And
11 then the FOIA claim was based upon 2011 as well, but that's
12 something that has to be filed in state court, and has to be
13 filed within 180 days if you're challenging what you believe
14 to be a partial denial of a FOIA request. So it's very clear
15 that they're barred by the statute of limitations.

16 And then I've raised several other arguments;
17 judicial immunity is very clear that that applies in this
18 case. All of the actions by the court as alleged in the
19 complaint are all things that happened in the courtroom while
20 the judge is handling a proceeding which the court
21 legitimately believes it had proper jurisdiction to handle.
22 And none of the very, very narrow exceptions to judicial
23 immunity apply here.

24 Same thing with the prosecuting attorney. We have
25 prosecutorial immunity for that. All of the accusations

Harnden v. St. Clair County 31st District Court

1 against the prosecuting attorney are based upon, you know,
2 handling matters on behalf of the state involving a criminal
3 case and involving some child protection proceedings. So I
4 think it's very clear.

5 THE COURT: Well, thank you very much. I will take
6 this case under advisement -- or both of these cases under
7 advisement. And there will be a written report and
8 recommendation issued in each.

9 MR. SHOUDY: Thank you, Your Honor.

10 THE COURT: Thank you.

11 DEPUTY COURT CLERK: Court is adjourned.

12 (Court in recess at 3:06 p.m.)

13 * * *

14

15

16

17

18

19

20

21

22

23

24

25

Harnden v. St. Clair County 31st District Court

1

2

3

4

5

6

7

8

9

10

11

12

13

14

C E R T I F I C A T I O N

15

16

17

18

19

20

21

22

23

24

25

I, Marie J. Metcalf, Official Court Reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s\Marie J. Metcalf March 24, 2018

Marie J. Metcalf, CVR, CM (Date)